

RESOLUTION NO. 15-019

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING CONDITIONAL USE PERMIT NO. UP15-0002 TO BRING IN TO  
CONFORMANCE A MASSAGE ESTABLISHMENT  
AT 122 WEST CALAVERAS BOULEVARD (APN: 22-24-037)**

**WHEREAS**, on January 7, 2015, an application was submitted by Trang Nguyen, to bring into conformance a massage establishment at an existing massage establishment located at 122 West Calaveras Boulevard. The property (APN: 22-24-037) is located within the General Commercial Zoning district.

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt under CEQA.

**WHEREAS**, on June 10, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act in that the use of massage services is considered a negligible change in operation of an existing massage use.

**Section 3: Conditional Use Permit (Section XI-10-57.04(F)) – The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP15-0002:**

- a. The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

As conditioned, the project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The project is located in an

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existing retail center, and is substantially surrounded by other commercial uses that are similar in nature. Other commercial uses in the center would be provided the opportunity to provide commerce to the massage establishment. Further, the hours of operation (10AM to 10PM) will not be disruptive to adjacent commercial businesses because they maintain similar hours, and the hours of operation are consistent with the Massage Ordinance per section III-6-7 (c). According to the Police Department's review, the project does not appear to create any adverse effects to the peace, health, safety, or welfare of persons residing or working in and around the surrounding area. There are no record of any prior police calls relating to this establishment since it began operating in 2013.

*b. The project is consistent with the Milpitas General Plan Policies;*

This project conforms to the intent of the General Commercial designation in that it provides a commercial service for personal and business services accessed primarily by the automobile in a shopping center. The project is also consistent with the implementing policies of the General Plan Land Use Element to promote infill development and provide a wide range of retail sales.

2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector. The massage establishment will close at 10 PM therefore, it will not be disruptive to the quiet and peaceful enjoyment of sensitive receptors.

**Consistent:** The project adds to the retail mix of the Calaveras Shopping Center by adding health and wellness services in conjunction with retail and various restaurant establishments.

2.a-I-7: Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

**Consistent:** The project expands employment opportunities and would help promote business retention by adding to the economic vitality of the shopping center.

*c. The project is consistent with the Milpitas Zoning Ordinance;*

The project is consistent with the purpose of the General Commercial (C2) Zone and development standards. The project is consistent with the purpose and intent of the General Commercial zone in that it provides a type of beauty and wellness service that caters to regional and local customers. Further, the massage establishment provides for a compatible land use with the other retail, entertainment, and restaurant uses within the center. The massage establishment is a commercial use that enhances the shopping center because it provides patrons with the opportunity to walk to several stores providing a variety of services. Additionally, the massage establishment consists of a single-purpose use that is served from an immediately parked automobile. The project complies with the City of Milpitas's parking requirement. Per Table 53.09-1 of the Milpitas Zoning Code, a massage establishment requires one parking space per 200 square feet. The project meets this requirement by providing the ten (10) parking spaces on site.

*d. The project is consistent with the Milpitas Midtown Specific Plan;*

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The project is consistent with the Midtown Specific Plan Land Use Plan. According to the Land Use Plan, General Commercial uses includes a wide range of retail sales, personal and business services accessed primarily by automobile. Individuals and patrons would primarily use automobiles to access the business because it is located along Calaveras Boulevard that carries a high volume of traffic, and it is in an existing shopping center with businesses served by automobiles. The project implements the Midtown Specific Plan by adding health and wellness services in conjunction with retail and various restaurant establishments found in the Calaveras Shopping Center.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-019 approving Conditional Use Permit No. UP15-0002, based on the above Findings and Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on June 10, 2015

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on June 10, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR  
UYEN NHI DAYS SPA CUP  
CONDITIONAL USE PERMIT NO. UP15-0002 TO BRING IN TO  
CONFORMANCE A MASSAGE ESTABLISHMENT  
AT 122 WEST CALAVERAS BOULEVARD (APN: 22-24-037)**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP15-0002 (“Permit”) shall have no force or effect unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)

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6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. (CA/P)
11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set

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forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on June 10, 2015, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, project description, or other approved submittal shall require that, prior to the issuance of planning approval, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

### **Project Specific Conditions**

16. Treatment room doors shall remain unlocked at all times (P) (B).
17. Ensure that the storefront window remain clear and unobstructed for the safety of employees and customers.
18. When private rooms are provided, lighting, ventilation, plumbing, lockers, etc. in massage establishments shall comply with MMC sec, III-6-8 as per City Policy BDP-IP08:
  - a.) Minimum lighting per Article 220 per 2013 CEC. In addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons. (B).
19. No changes shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of the current codes(s). California Fire Code (CFC) Section 102.3. (F).
20. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in CFC Section 906 and as required by the Fire Code Official (F).

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21. The use shall at all times comply with the Milpitas Massage Ordinance as codified in Municipal Code Section III-6, as may be amended from time to time.

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(PD) = Police